No. 77-1493

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

GLADSTONE REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

ROBERT A. HINTZE REALTORS, et al.,
Petitioners,

vs.

VILLAGE OF BELLWOOD, et al.,
Respondents.

On A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals, which is reported at 569 F.2d 1013 (7th Cir. 1978), appears in the Appendix. *Appendix* 151-163. The opinions of the District Courts, which are not reported, are also contained in the Appendix. *Appendix* 83-89, 148.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1978. The petition for a writ of certiorari was filed within 90 days of that date and was granted on June 12, 1978. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether homeowners or their village have standing to sue under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*) or the Civil Rights Act of 1866 (42 U.S.C. § 1982) to prevent illegal racial steering directed against their community by realtors and their agents.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are set forth at Brief for Petitioners 2-8.

STATEMENT OF THE CASE

Factual Background

On October 24, 1975, respondents Edward B. Powell, Mary P. Powell, Charles Elliott, Vicki Simmons, Sandra T. Sharp, Joyce Perry, the Village of Bellwood, and the Leadership Council for Metropolitan Open Communities filed two complaints with the District Court for the Northern District of Illinois charging, respectively, that petitioners Gladstone Realtors and six of its salespersons and Robert A. Hintze Realtors and three of its salespersons had engaged in the practice of racial steering in violation of Title VII of the Civil Rights Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. § 1982). *Appendix* 4-7, 97-100. Specifically, petitioners were accused of illegally influencing the choice of prospective homebuyers on the basis of race by discouraging blacks from purchasing homes in predominantly white areas and by discouraging whites from purchasing homes in integrated, "changing," or predominantly black neighborhoods in a designated area of Bellwood, Illinois. *Ibid.*

Bellwood is a suburb of Chicago in western Cook County to which a number of blacks, such as respondent Joyce Perry, have moved in recent years. Four of the other individual respondents are white homeowners in Bellwood. Respondent Sandra Sharp is a black resident of neighboring Maywood. *Appendix* 32-34. The respondent brokers have offices in the Bellwood area and are members of the West Suburban Board of Realtors, which covers an area that includes the towns of Bellwood, Berkeley, Broadview, Hillside, Maywood, Melrose Park, Northlake, Stone Park and Westchester, Illinois.

As one of the few municipalities in its area with a significant and growing black population, Bellwood has become a "target" community to which realtors and their sales personnel direct black homeseekers who want to live in the western suburbs. Meanwhile, according to reports received by the Village of Bellwood, area realtors steer white homeseekers away from Bellwood to near-by communities such as Berkeley, Westchester, and Hillside. Within Bellwood, itself, certain neighborhoods were being "sold black," while homes in the western part of the Village were only being shown to whites.

Wanting to keep their homes and still live in a stable, integrated community, a number of Bellwood residents, both white and black, asked their Village officials to determine which brokers and sales persons were making efforts to racially change their community and to stop racial steering and other discriminatory practices before substantial parts of Bellwood were resegregated. These residents hoped to avoid the economic losses, fear, social unrest, and other hardships that they knew often accompanied rapid racial change in a community, where "if the real estate industry is allowed to operate unchecked, the pace of racial transition will be manipulated in a way that will irreparably distort any chance for normal and stable racial change."[1]

[1] *Zuch v. Hussey*, 394 F. Supp. 1028, 1034 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1976). With respect to the effects of rapid racial change on a community and the role that realtors may play in that change, *see also id.*, at 1032-1034 and 1053-1055; *United States v. Bob Lawrence Realty, Inc.*, 474 F.2d 115, 124 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Brown v. State Realty Co.*, 304 F. Supp. 1236, 1240 (N.D. Ga. 1969); *United States v. Mitchell*, 355 F. Supp. 1004, 1005-1006 (N.D. Ga. 1971); *aff'd*, 474 F.2d 115 (5th Cir. 1973), *cert. denied*, 414 U.S. 826 (1973); *Barrick Realty Co. v. City of Gary, Indiana*, 354 F. Supp. 126, 135 (N.D. Ind. 1973), *aff'd*, 491 F.2d 161 (7th Cir. 1974); *United States v. Real Estate One, Inc.*, 433 F. Supp. 1140, 1150 (E.D. Mich. 1977).

Before starting any litigation, the Village decided to organize and conduct an investigation of real estate practices in the Bellwood area in September of 1975. In the course of this investigation, several volunteers, including five of the individual respondents, visited various real estate offices acting as prospective homebuyers in order to ascertain whether a black prospect would be treated differently than a white prospect. 569 F.2d, at 1015; *Appendix* 152-153. These "tests" showed that some brokers followed the law, but that agents of petitioners Gladstone Realtors and Robert A. Hintze Realtors discriminated between prospective homebuyers on the basis of their race: white and black prospects who asked for the same thing in terms of price, size, and general location were shown homes in different areas, with the blacks' housing choice often being limited to eastern Bellwood alone or in some cases to Bellwood and other integrated or racially changing communities.

For example, when Lonnie M. Randolph, a black, visited Gladstone Realtors' office in Westchester and asked for homes in the area, he was shown five house listings, all in neighborhoods in eastern Bellwood where substantial numbers of blacks already lived (see *Appendix* 64-68); when Edward B. Powell, who is white, visited the same office and made the same request, he was given five entirely different listings, all of which were in all-white neighborhoods in Westchester, southern Broadview, and western Bellwood. *Appendix* 69-70. The salesman with whom Powell dealt told him that "there are some areas of Bellwood he did not want to show us because they were bad areas. When asked why they were bad, he said they were integrated." *Appendix* 70. Later, Powell picked out a listing for a home in an integrated area of eastern Bellwood on Cernan Drive, which the salesman said was "kind of nice." According to Powell's report:

> I asked what "kind of nice" meant. He said that I must not have been following what he had been saying. He showed us the Bellwood map and pointed out the [integrated] Zuelke Drive area and where he had been showing me homes, he pointed to the western side of Bellwood on the map and said these are the better areas I would be shown. During this conversation the salesman said again the Zuelke Drive area was integrated and the area around Cernan Drive was still alright, but he would show us homes west of there. *Appendix* 70.

When another white couple visited the Gladstone office, they, too, were only shown listings for homes in white areas. According to their report, the salesman with whom they dealt "began by saying he was flipping through pages of sales books, passing over homes in integrated neighborhoods. He said he didn't know how we felt, he really didn't care. We made no comment. He then said he would show us houses only west . . . ." *Appendix* 75. Similar statements about "integrated" areas of Bellwood were made by salesmen for petitioner Hintze Realtors. *E.g.*, *Appendix* 131.

Proceedings Below

As a result of this and other evidence produced by Bellwood's investigation, the Village, six local homeowners, and the Leadership Council for Metropolitan Open Communities brought these suits under the federal fair housing laws to recover damages and to have petitioners' discriminatory practices declared illegal and enjoined. *Appendix* 6-7, 99-100. As homeowners in the area affected by petitioners' racial steering practices, the individual respondents alleged that Gladstone's and Hintze's illegal conduct denied them their "right to select housing without regard to race" and deprived them "of the social and professional benefits of living in an integrated society." *Appendix* 6, 99. Petitioners were accused not only of steering testers, but of steering everyone "who used or sought to use the[ir] services" in the Bellwood area both before and after petitioners were investigated by the Village. *Appendix* 5, 98. For its part, the Village of Bellwood alleged that it has been injured "by having the housing market in [Bellwood] wrongfully and illegally manipulated to the economic and social detriment of the citizens of such village." *Appendix* 6, 99. Finally, the Leadership Council asserted that petitioners' steering practices interfered with its work of combatting housing discrimination in the Chicago area and required it to make substantial expenditures to investigate and eliminate those unlawful acts. *Appendix* 6, 98-99.

In response to these complaints, petitioners filed motions to dismiss in both cases on November 17, 1975. *Appendix* 12-13. While these motions were pending,[2] both sides filed written interrogatories, requests for production of documents, and requests for admissions. *Appendix* 8-22, 100-113. Respondents answered these requests in both cases on April 2, 1976. *Appendix* 25-77, 114-142. Petitioners, however, never responded to the discovery requests directed to them.

On July 7, 1976, petitioners filed motions for summary judgment in both cases. *Appendix* 78-82, 143-147. These motions, which were based in part on the discovery received from respondents, alleged that none of the respondents had standing to assert their claims under the federal fair housing laws because they were not actually in the market for new homes. On September 23, 1976, Judge Decker entered his Memorandum Opinion

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[2] Petitioners' motion to dismiss in *Gladstone* was denied by Judge Decker on March 29, 1976, in an order in which the court ruled that ". . . the complaint on its face does state a claim for relief under [§ 1982 and Title VIII]." *Appendix* 23. Judge Perry never ruled on the motion to dismiss in *Hintze*.

granting petitioners' motion in the *Gladstone* case and dismissing the cause. *Appendix* 83-89. On September 29, 1976, Judge Perry explicitly adopted Judge Decker's earlier opinion granting petitioners' motion for summary judgment and dismissed the *Hintze* case. *Appendix* 148.

The Court of Appeals for the Seventh Circuit reversed. 569 F.2d 1013 (7th Cir. 1978); *Appendix* 151-163. It held that the thrust and rationale of this Court's decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972) "plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." 569 F.2d, at 1019; *Appendix* 160.[3] The Seventh Circuit noted that the allegations of the individual homeowners here were "virtually identical" to those that *Trafficante* had held were sufficient to establish standing under Title VIII. 569 F.2d, at 1016; *Appendix* 155. With respect to the Village of Bellwood, the court pointed out that

> it is apparent that specific concrete injury with substantial nexus to the Village's status as a unit of government could be proved under these complaints. *See Flast v. Cohen*, 392 U.S. 83, 102 (1968). An area targeted as a "changing neighborhood" to which minority homeseekers may be steered could experience unnaturally rapid population turnover, with destabilized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems to which a town such as Bellwood would have to commit resources in attacking them.

569 F.2d, at 1017; *Appendix* 156.

[3] The Court of Appeals affirmed the dismissal of the Leadership Council on the ground that the Council's commitment to fair housing in these cases was not sufficient to satisfy such cases as *Sierra Club v. Morton*, 405 U.S. 727 (1972). 569 F.2d, at 1017; *Appendix* 156-157.

Finally, the Court of Appeals rejected the argument adopted by the Ninth Circuit in *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859 (1976) that homeowners in an area where local realtors engage in racial steering cannot bring a Title VIII complaint directly in federal court under 42 U.S.C. § 3612 without first filing a complaint with HUD under 42 U.S.C. § 3610. After careful consideration of the language, intent, and legislative history of Title VIII, the Seventh Circuit joined the numerous other federal courts throughout the country that have concluded that *TOPIC* was wrongly decided[4] and held that "there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." 569 F.2d, at 1019; *Appendix* 162.

In view of its holding that the individual homeowners and the Village had standing under Title VIII, the Court of Appeals did not consider standing under § 1982 separately. 569 F.2d at 1017, n. 4; *Appendix* 157. It concluded by remanding these cases to the District Courts for further proceedings. 569 F.2d, at 1020; *Appendix* 163.

[4] *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y. 1977); *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071 (D. N.J. 1976); *see also Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975); *Village of Park Forest v. Fairfax Realty*, P-H:Eq. Opp. Hsing Prtr. ¶13,699 (N.D. Ill. 1975) and P-H:Eq. Opp. Hsing Rptr. ¶13,781 (N.D. Ill. 1976); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975).

SUMMARY OF ARGUMENT

Petitioners' racial steering practices violate Title VIII and § 1982. Those illegal practices are destroying Bellwood as an integrated community, thereby imposing financial and social injuries on the Village and its homeowners that are even greater than those recognized as sufficient to confer standing in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972). Respondents are asserting their own rights to maintain their homes and their community free from illegal racial considerations. In addition, they are the only effective adversary of petitioners' practice of steering white and black homeseekers to different areas.

The Court of Appeals' decision that standing under § 3612 is as broad as standing under § 3610 is supported by the language of the Fair Housing Act, its legislative history, the Supreme Court's unanimous decision in *Trafficante*, the authoritative interpretation of the statute by HUD, and the overwhelming number of federal court decisions on point. Only the Ninth Circuit in *TOPIC* has disagreed, and that decision totally misconstrued the proper relationship of § 3610 and § 3612. These two sections provide alternative, independent remedies to be used at the option of the complainant. Section 3610 does have a role in resolving certain simple complaints, but it was not intended to be as powerful a remedy as § 3612 or to limit § 3612 in any way.

Respondents also have standing under § 1982. Section 1982 condemns racial discrimination in housing as thoroughly as Title VIII does, and respondents' right to "hold" their homes free from petitioners' racial steering is protected by § 1982.

Since respondents' injuries are direct and personal to them and since a federal court can provide relief that will redress those injuries, the requirements of standing imposed by Article III and "judicial self-governance" considerations have been satisfied. Indeed, *Trafficante* forecloses any argument to the contrary.

Thus, it is well established that petitioners' steering practices violate the federal fair housing laws, that those violations caused respondents personal, concrete, and compensable injury, and that those injuries can and should be redressed by a federal court should respondents prevail at trial. Petitioners have not challenged any of these propositions by way of a responsive pleading, factual affidavit, or other technique that could justify summary judgment. Rather they claim that certain discovery answers indicating at this early stage what incriminating evidence is currently available to respondents justify ending these cases not only prior to trial, but prior to respondents' opportunity to take any discovery of their own. Apart from the fact that the discovered evidence alone would justify full relief for respondents, summary judgment is simply not an appropriate method of resolving litigation in which the ultimate factual issues—whether petitioners have engaged in racial steering and to what extent respondents have been injured thereby—are still so very much in dispute.

ARGUMENT

Introduction

The Village of Bellwood and the individual respondents allege in substance that petitioners' discriminatory practices are causing unnaturally rapid racial change amounting to the resegregation of their community.[5] As a result, local homeowners—black as well as white—are being forced to choose between moving away from their integrated village or suffering the economic losses and other hardships of keeping their Bellwood homes. See n. 1, *supra*, and 569 F.2d, at 1017; *Appendix* 156. The Village of Bellwood, of course, cannot run away. As an area targeted by petitioners for rapid racial change, the Village faces "unnaturally rapid population turnover, with destablized and possibly negative effects on property values and thus on its municipal tax base, and a conceivable increase in certain municipal problems" to which it will have to commit its limited resources. 569 F.2d, at 1017; *Appendix* 156. It is a mark of how poorly petitioners understand this case that they label these injuries throughout their brief as merely "generalized" and "indirect." To the contrary, this Court has determined that the benefits to both whites and blacks of living in an integrated community are "substantial" (*Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85, 94-95 (1977)), and it has unanimously held that being deprived of these benefits is "[i]ndividual injury or injury in fact" sufficient to satisfy the requirements of standing. *Trafficante v. Metropolitan Life Insurance Co.*, *supra*, 409 U.S., at 209.[6]

[5] *See Appendix* 5-6, 98-99. It is, of course, axiomatic that the complaint and other materials submitted in connection with the summary judgment motions must be viewed in the light most favorable to respondents as the parties opposing those motions. *E.g., Adickes v. S. H. Kress and Company*, 398 U.S. 144, 157 (1970).

In addition to their oft-repeated technique of labelling respondents' injuries "generalized" and "indirect," petitioners create a number of other false impressions that should be cleared up by way of introduction. First, petitioners imply that they have only been accused of steering testers, not actual homeseekers. As noted above, the complaints clearly allege that petitioners steered actual homeseekers both before and after the testers visited their offices. *Appendix* 5, 98.

Second, petitioners erroneously suggest that these claims of unlawful steering have somehow been amended or limited by respondents' interrogatory answers indicating that the evidence now available to respondents to prove these violations is the "subject matter" of the testers' report. *Appendix* 27-28, 116-117. The "subject matter" of those reports, of course, is the different treatment that petitioners gave to their white and black

[6] Respondents' injuries are even more substantial than those held sufficient in *Trafficante*. Respondents do make the *Trafficante*-type claim of losing the social, professional, and economic benefits of living in an integrated community (*Appendix* 6, 99), but there is more here than the desire of affluent whites to have some black neighbors. Bellwood, after all, was *already* integrated when petitioners began to channel more blacks into the Village and steer whites away. Thus, the economic injuries suffered by the individual respondents (*e.g.*, the reduced value of their homes caused by "panic selling" in their area) are more tangible than the economic injuries alleged in *Trafficante*, and the "social" injuries here result not from petitioners prohibiting an integrated community, but rather from their destroying such a community. Actually the precise claim that would be comparable to *Trafficante* would lie with residents of neighboring white towns such as Westchester or Berkeley, to which petitioners direct only white homeseekers. As important and well-recognized as such a claim might be, it would not allege injuries nearly so serious as those suffered by the Bellwood homeowners in this case.

customers. Furthermore, evidence that petitioners steered the testers *is* competent evidence that they also made similar misrepresentations to actual homeseekers. See, *e.g.*, *McCormick on Evidence* § 197 (2d ed. 1972). As the Court of Appeals pointed out:

> What the testers did was to generate evidence suggesting the perfectly permissible inference that the defendants have been engaging, as the complaints allege, in the *practice* of racial steering with all of the buyer prospects who come through their doors. Racial steering, by its nature, is a subtle form of discrimination that is difficult if not impossible to prove otherwise than by comparing the areas to which homeseekers of different races are directed. The strength of the inference suggested by such a comparison is not affected by whether or not the "homeseeker" has a bona fide intent to purchase a home.

569 F.2d, at 1016; *Appendix* 153-154. See also *Zuch v. Hussey*, 394 F. Supp. 1028 (E.D. Mich. 1975), *aff'd and remanded*, 547 F.2d 1168 (6th Cir. 1976) (steering enjoined on the basis of evidence supplied by testers).[7]

Third, the individual respondents' claims are based on their injuries as homeowners, not on their status as

[7] Even if it were held that specific examples of petitioners' discrimination against actual homeseekers were required, summary judgment should not have been granted by the trial courts. Much of the evidence of how petitioners treat their prospects is, after all, known only to them, and respondents should be permitted an opportunity to discover that evidence. *Cf., Hospital Building Co. v. Trustees of Rex Hospital*, 425 U.S. 738, 746 (1976). It must be remembered that petitioners never answered respondents' discovery requests, which had been pending for over 10 months when summary judgment was entered. Thus, as the Court of Appeals noted, petitioners' argument that there has been no showing of steering practiced on true homeseekers "rings hollow in the light of defendants' refusal to date to provide any of the discovery sought by plaintiffs." 569 F.2d, at 1016; *Appendix* 154. See also Wright, *Law of Federal Courts*, § 86, pp. 382 and 385 (2d ed. 1970).

testers. Indeed, at least one of the respondents (Mary P. Powell) did not participate in the testing program. With respect to her claims, therefore, the issue is simply whether a homeowner has standing under the federal fair housing laws to challenge racial steering practices directed against her community. The other individual respondents assert the same homeowners' claims as Mrs. Powell does. Surely their rights cannot be *reduced* by the fact that they also helped in the investigations that led to these suits. As the Court of Appeals put it: "To the degree defendants are seeking to saddle plaintiffs with the argument that testers *qua* testers have a cause of action, they have either misread the complaint or erected a straw man." 569 F.2d, at 1016; *Appendix* 154.[8]

Finally, it is important to keep in mind that respondents are asserting their own rights, not those of third parties. It is respondents' commnity that is being racially changed, and it is *their* right to maintain their present homes without regard to illegal racial considerations that petitioners are violating. The fact that others seeking homes may also be victims of petitioners'

[8] Ever since fair housing litigation began, courts have uniformly accepted and endorsed the use of testers to investigate and prove allegations of housing discrimination. *E.g., United States v. Youritan Construction Company*, 370 F. Supp. 643, 647, n. 3 and 650 [and cases cited] (N.D. Cal. 1973), *aff'd as modified*, 509 F.2d 623 (9th Cir. 1975); *Smith v. Anchor Building Co.*, 536 F.2d 231, 234, n.2 (8th Cir. 1976); *Williamson v. Hampton Management Co.*, 339 F. Supp. 1146, 1148 (N.D. Ill. 1972); *Seaton v. Sky Realty Co.*, 372 F. Supp. 1322 (N.D. Ill. 1972), *aff'd*, 491 F.2d 634 (7th Cir. 1974); *Johnson v. Jerry Pals Real Estate*, 485 F.2d 528 (7th Cir. 1973). In *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486, 488 (E.D. N.Y. 1977), the court held that testers subjected to racial steering stated a claim under Title VIII. See also *Meyers v. Pennypack Woods Home Ownership Ass'n.*, 559 F.2d 894, 897-898 (3d Cir. 1977), holding that testers have standing in a § 1982 case. This Court has recognized standing on the part of testers in other civil rights contexts. See *Evers v. Dwyer*, 358 U.S. 202 (1958); *Pierson v. Ray*, 386 U.S. 547 (1967).

practices does not reduce the respondents' interests in residing in a stable, integrated neighborhood and in not being "panicked" out of Bellwood. The residents of this area should not be made to depend on suits by third parties who have been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to fight petitioners' discriminatory practices. See *infra*, p. 25 and n. 12. As one commentator has concluded: "While a black who is denied access to housing can sue for damages and injunctive relief, in many cases it is the continuing residents who have the greatest 'stake' in enforcement of the fair housing laws." Note, *Racial Discrimination in the Private Housing Sector: Five Years After*, 33 Md. L. Rev. 289, 311 (1973).

In short, this case simply does not turn on the rights of testers or absent third parties. What is involved is the right of homeowners in a specific village whose racial make-up is being fashioned by discriminatory housing practices to protect their substantial economic and social interests in living in a stable, integrated community. "The real issue in this litigation is whether the real estate industry should be allowed to enter into the process and, for commercial advantage, artificially hasten or at least accelerate the rate of population turnover and the pace of racial change." *Zuch v. Hussey, supra*, 394 F. Supp., at 1033. Respondents must be allowed to raise this issue here, for it is *their* right to select and maintain their present homes without regard to racial considerations that petitioners are violating. Respondents' substantial stake in these cases makes it clear that the issue will be presented in an adversary context, which is "the gist of the question of standing." *Baker v. Carr*, 369 U.S. 186, 204 (1962).

I.

RESPONDENTS HAVE STANDING UNDER THE FAIR HOUSING ACT.

A. Racial Steering Violates The Fair Housing Act.

Since respondents' claims are brought under specific statutory provisions, the issue of their standing to assert those claims depends on whether they are "arguably within the zone of interests to be protected" by the federal fair housing laws. See *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Barlow v. Collins*, 397 U.S. 159, 163 (1970). As long as the allegations of personal injury satisfy Article III requirements (see *infra* 52-56), "Congress may create a statutory right or entitlement the alleged deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute [citing cases including *Trafficante.*]" *Warth v. Seldin*, 422 U.S. 490, 514 (1975). According to *Warth*:

> Although standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, *e.g., Flast v. Cohen*, 392 U.S. 83, 99 (1968), it often turns on the nature and source of the claim asserted. The actual or threatened injury required by Art. III may exist solely by virtue of "statutes creating legal rights, the invasion of which creates standing . . . ."

There can be no question that the allegation that petitioners have engaged in racial steering by discriminating among prospective homeseekers on the basis of race states a cause of action under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and also under 42 U.S.C. § 1982. Specifically, petitioners' practices of directing similarly-situated white and black customers to different neighborhoods makes a person's "ability to buy property turn

on the color of [his] skin" in violation of § 1982 (*Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968)) and makes housing unavailable because of race in violation of Title VIII. *E.g., Zuch v. Hussey, supra; Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service*, 422 F. Supp. 1071 (D. N.J. 1976) (both Title VIII and § 1982 violated); *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, 429 F. Supp. 486 (E.D. N.Y. 1977); *United States v. Real Estate One*, 433 F. Supp. 1140 (E.D. Mich. 1977); *Moore v. Townsend*, 525 F.2d 482 (7th Cir. 1975) (both Title VIII and § 1982 violated); *United States v. Henshaw Bros., Inc.*, 401 F. Supp. 399 (E.D. Va. 1974); *United States v. Robbins*, P-H: Eq. Opp. Hsing. Rptr. ¶13,655 (S.D. Fla. 1974).[9] The court in *Bergen County*, for example, held that racial steering constitutes a "clear violation of § 3604(a)" and noted that:

> The real estate broker and the multiple listing service are crucial intermediaries between buyers and sellers of residential real estate. The complaint fairly pleads that the influence of these intermediaries extends far beyond any one meeting of the minds between an individual purchaser and an individual seller. The plaintiffs allege that these real estate intermediaries actively and passively mislead potential purchasers in an effort to preserve or extend segregated housing patterns. In such a situation the

[9] Most of the courts that have held that racial steering violates Title VIII have done so under 42 U.S.C. § 3604(a), which makes it unlawful "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, or national origin." Steering may also violate one or more of the other subsections of § 3604. See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra*, 429 F. Supp. at 488 (3604(b)'s prohibition of discrimination "in the provision of services" violated by steering); see also Note, *Racial Steering: The Real Estate Broker and Title VIII*, 85 Yale L.J. 808, 818, 821 (1976).

> factor of racial prejudice which Congress sought to eliminate is not merely introduced into the housing market in a discrete incident. It is given an effect extending beyond any one transaction involving a single bigoted purchaser or seller. To insulate the intermediary from Title VIII liability is to retreat from the affirmative mandate of § 3604(a).

422 F. Supp. at 1075-1076.

In holding that racial steering violates the fair housing laws, federal courts have recognized that the intent of these laws is not merely to prevent discriminatory refusals to deal, but is to foster integrated communities for the benefit of both white and black residents and homeseekers. Congress declared in Title VIII that it is "the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States" (42 U.S.C. § 3601), and the Supreme Court has made clear that the "language of the Act is broad and inclusive" and should be given a "generous construction" to effectuate its important national purpose of replacing "the ghettos by truly integrated and balanced living patterns." *Trafficante v. Metropolitan Life Insurance Co., supra*, 409 U.S., at 209-212. See also *Barrick Realty, Inc. v. City of Gary, Indiana*, 491 F.2d 161, 164 (7th Cir. 1974); *Otero v. New York City Housing Authority*, 484 F.2d 1122, 1134 (2d Cir. 1973).[10]

[10] A similar concern underlies 42 U.S.C. § 1982. As this Court declared when it first construed § 1982 to prohibit housing discrimination: "When racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery." *Jones v. Alfred H. Mayer Co., supra*, 392 U.S. at 442-443. The next year, the Court held that a white had standing to assert a § 1982 claim against a homeowners' group that prevented him from leasing his house to a black and reaffirmed that a "narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by it. *Sullivan v. Little Hunting Park*, 396 U.S. 229, 238 (1969).

B. Respondents Have Suffered Direct Injuries Within The Zone Of Interests Intended To Be Protected By The Fair Housing Act As A Result Of Petitioners' Racial Steering Pra tices In The Bellwood Area.

The six individual r spondents are white and black homeowners in the area affected by petitioners' racial steering practices, which they claim deprive them of their right to keep their homes without regard to illegal racial considerations and of the economic, social, and professional benefits of living in an integrated community. The starting point and focus of analysis for determining whether these claims are "arguably within the zone of interests to be protected" by the federal fair housing laws is the Supreme Court's decision in *Trafficante v. Metropolitan Life Insurance Co., supra.* There, two tenants—one black and one white—in an apartment complex with 8200 residents brought suit under Title VIII, alleging that their landlord had discriminated against non-white applicants. The *Trafficante* plaintiffs claimed that the landlord's discrimination cost them the social benefits of living in an integrated community, deprived them of business and professional advantages that would have accrued from living with members of minority groups, and caused them to become residents of a white ghetto. In holding that the two tenants had standing to sue on their claims, the Court's unanimous opinion noted:

> While members of minority groups were damaged the most from discrimination in housing practices, the proponents of the legislation emphasized that those who were not the direct objects of discri nination had an interest in ensuring fair housing, as they too suffered. . . . The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community." 409 U.S., at 210-211.

The language of the Fair Housing Act, said the Court, manifests "a congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Id.*, at 209. Accordingly, the injuries claimed by the *Trafficante* plaintiffs, which were actually less substantial than those claimed here (see n. 6, *supra*), were held sufficient to confer standing.

The "direct objects" of petitioners' discrimination are actual homeseekers. But the people who are the injured *victims* of that discrimination are not limited to actual homeseekers, and their numbers surely include the Bellwood homeowners, whose community is being racially changed by petitioners. *Trafficante* means that anyone injured *as a consequence of the defendant's discriminatory conduct* has standing to sue under Title VIII, whether or not he is the "direct object" of that discrimination. Appropriate plaintiffs under *Trafficante* include "white home owners, anxious to stabilize the racial balance in their neighborhood before the 'tipping point' is reached, [who] realize that real estate agents are no longer showing white buyers the available houses in their neighborhood." See Note, *Racial Discrimination in the Private Housing Sector: Five Years After, supra,* 33 Md. L. Rev., at 313-314.

Homeowners in a specific community whose racial make-up is being fashioned by discriminatory housing practices assert interests at least as strong as did the plaintiffs in *Trafficante.*[11] Indeed, even apart from the

[11] See n. 6, *supra.* In addition to being deprived of their "*Trafficante*" right to live in an integrated community, respondents face other hardships as well. As the court pointed out in *Zuch v. Hussey, supra,* homeowners such as respondents may feel pressured into "panic selling" by "crime, overcrowding, depressed property values, and the fear of being 'left behind'"—the overall reduction of the "quality of life"—that are associated with rapid racial change in their neighborhood. 394 F. Supp., at 1032. See also cases cited in n.1, *supra.*

direct economic injuries caused by petitioners' racial steering practices, Bellwood homeowners would suffer more than the residents of the *Trafficante* housing development did. Residents of an all white housing complex need only look to the next residential facility for the interracial associations they desire, but the respondents may have to give up their homes in Bellwood and go to an entirely different area. A segregated building is less of a "ghetto" than a segregated neighborhood or community. *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc.*, *supra*, 422 F. Supp., at 1081.

Thus, the lower courts have regularly held that residents of an area undergoing rapid racial change may challenge realtors' steering practices that lead to this change under the federal fair housing laws, regardless of whether the plaintiffs were actual homeseekers or not. *E.g., Zuch v. Hussey, supra; Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc., supra; Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra; Heights Community Congress v. Rosenblatt Realty*, 73 F.R.D. 1 (N.D. Ohio 1975); *Village of Park Forest v. Fairfax Realty Co.*, P-H:Eq. Opp. Hsing. Rptr. ¶13,699 (N.D. Ill. 1975) and P-H:Eq. Opp. Hsing. Rptr. ¶13,784 (N.D. Ill. 1976). In *Bergen County*, for example, the court held that individual residents of a segregated suburban area outside of New York City and their town had standing to challenge the steering practices of local realtors under Title VIII, because "all of the plaintiffs are within the zone of interests sought to be protected by § 3612 of the Fair Housing Act and all have standing to sue." *Fair Housing Council of Bergen County v. Eastern Bergen County Multiple Listing Service, Inc., supra*, 422 F. Supp., at 1083.

Residents' interest in the racial make-up of their community has often been held sufficient to give them standing to attack discriminatory actions that affect their area. *E.g., Shannon v. HUD*, 436 F.2d 809 (3d Cir. 1970); *South East Chicago Commission v. HUD*, 343 F. Supp. 63, 66-67 (N.D. Ill. 1972), *aff'd*, 488 F.2d 1119 (7th Cir. 1973); *Marin City Council v. Marin City Redevelopment Agency*, 416 F. Supp. 700 (N.D. Cal. 1975); *Fox v. HUD*, 416 F. Supp. 954, 956 (E.D. Pa. 1976). In *Shannon, supra*, for example, the Third Circuit held that white and black residents, businessmen, and representatives of private civic organizations in a Philadelphia neighborhood had standing to sue for an injunctiion against HUD's participation in a low income housing project which was about to be constructed. The complaint alleged that HUD's approval of the project would have "the effect of increasing the already high concentration of low-income blacks" in the area. 436 F.2d, at 812. Plaintiffs' standing was challenged on the ground that they were neither displaced residents nor potential occupants of any proposed project and that therefore their interests were too remote. The court stated:

> We do not agree. Certainly the dispute which they seek to have adjudicated will be presented in an adversary context. *Flast v. Cohen*, 392 U.S. 83, 101 (1968). The test, for Article III purposes, is whether or not plaintiffs allege injury in fact. They do indeed. They allege that the concentration of lower income black residents in a 221(d)(3) rent supplement project in their neighborhood will adversely affect not only their investments in homes and businesses, but even the very quality of their daily lives.

Id., at 818. The fact that the *Trafficante* opinion explicitly quoted from this passage in describing the important role of private suits in enforcing Title VIII (409 U.S., at

211) further supports respondents' standing to sue here under the Fair Housing Act. See also *Walker v. Fox*, 395 F. Supp. 1303 (S.D. Ohio 1975); *United States v. L & H Land Corporation, Inc.*, 407 F. Supp. 576 (S.D. Fla. 1976).

Respondents' injuries are clearly not "indirect." They are comparable to the injuries alleged in *Trafficante*, which did not result from acts of discrimination directed against the plaintiffs, but rather from the discriminatory exclusion of non-whites from their housing complex and the resulting loss of plaintiffs' associational interests in racial integration. Those interests were injured regardless of the fact that the landlord had directed its discriminatory conduct against outsiders. Similarly, in *Shannon v. HUD, supra*, the plaintiffs were not the direct target of the defendant's conduct. In *Trafficante, Shannon*, and similar cases in which residents have made claims based on their intererst in the racial make-up of their area, these claims have been held to be within the zone of interests created by the Fair Housing Act, which was intended to define standing as broadly as is permitted under Article III. See *Trafficante v. Metropolitan Life Insurance Co., supra*, 409 U.S., at 209.

The fact that actual homeseekers may also be victims of petitioners' steering practices does not reduce respondents' interests in residing in a stable, integrated neighborhood and in not being "panicked" out of Bellwood. Homeowners in Bellwood should not be made to depend on suits by third parties who have actually been steered for protection of their rights, particularly since the actual homeseekers may not know they have been steered or may not have the interest or resources to

fight petitioners' discriminatory practices.[12] Respondents' interests are precisely those that the federal fair housing laws were intended to advance. To deny them standing would cripple those laws in steering cases and would severely impede the national policy of open, integrated housing mandated by Congress in the Fair Housing Act.

C. Standing Under § 3612 Is As Broad As Standing Under § 3610.

Petitioners seek to avoid the application of *Trafficante* to this case by drawing a distinction between Title VIII standing to sue after complaining to the Secretary of Housing and Urban Development pursuant to 42 U.S.C. § 3610, which they apparently concede would be available to respondents, and Title VIII standing to sue directly pursuant to 42 U.S.C. § 3612, which they argue

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[12] A black person who is shown house listings in particular neighborhoods has no way of knowing what listings are being made available to whites and can therefore seldom detect racial steering. Accordingly, most of the cases involving steering have of necessity been brought either by the United States or by plaintiffs similarly situated to those in the present case, usually working with the assistance of testers. See cases cited p. 17-18, *supra*. "Citizen groups seeking to stabilize racial balance in a changing neighborhood have the interest in and knowledge of the situation over a period of time that is needed to substantiate charges of blockbusting, illegal solicitation, and other discriminatory real estate practices." Note, *Racial Discrimination in the Private Housing Sector: Five Years After, supra*, 33 Md. L. Rev., at 311-312. The fact that actual homeseekers may not know that they have been steered suggests an additional (though not the principal) reason for recognizing respondents' standing here. Thus, to the extent that actual homeseekers who have been steered by petitioners are not aware of or able to assert their own rights, respondents may be "the only effective adversary" of this illegal discrimination and thus should be permitted to assert the claims of these actual homeseekers as well as their own rights. *E.g., Barrows v. Jackson*, 346 U.S. 249, 259 (1053); *Sullivan v. Little Hunting Park, Inc., supra*, 396 U.S., at 237.

is too narrow to cover respondents' claims. The Court of Appeals correctly rejected this argument, which finds no support in the language of the statute, is refuted by the clear legislative history of the Act, and directly conflicts with the *Trafficante* holding.

1. By Its Terms, § 3612 Covers The Same Types Of Claims And Claimants As § 3610.

First of all, the Act, itself, does not distinguish between who may complain under § 3610 and who may sue under § 3612. Section 3610 provides for an administrative complaint by a "person aggrieved," who is defined as "[a]ny person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice." 42 U.S.C. § 3610(a). The Act defines a "discriminatory housing practice" as any "act that is unlawful under § 3604, § 3605, or § 3606." 42 U.S.C. § 3602(f). Similarly, § 3612 states that "[t]he rights granted by sections 3603, 3604, 3605, and 3606 may be enforced by civil actions" in appropriate federal and state courts. Thus, § 3612 authorizes direct court actions for all of the types of discriminatory housing practices that may be complained of under § 3610.

Petitioners' argument that "indirect victims" of discriminatory housing practices may complain under § 3610, but not under § 3612, is simply not based on anything found in the statute. Indeed, there is no limitation at all in the language of § 3612 with respect to who may sue under it. In the broadest possible terms, § 3612 authorizes civil actions to enforce "the rights granted" in § 3603, § 3604, § 3605, and § 3606. Nor do these substantive sections limit standing in any way. Rather than defining who may sue, § 3604, § 3605, and § 3606 simply declare "unlawful" a number of different types of discriminatory housing practices. Thus, § 3612 authorizes a court action by anyone who is injured as a result of a violation of § 3604, § 3605, or § 3606, regardless of whether the violation was specifically directed against that person or not.

Petitioners make much of the fact that one part of one subsection of § 3604 requires that there first have been a "bona fide offer" before a violation can be established. That requirement is notably absent from the other prohibitions of § 3604(a) and, for that matter, from all of the other substantive provisions of the Act. Indeed, when the bona fide offer requirement was being debated, its own sponsor, Senator Allott, specifically noted that it applied only to limited sale or rental situations and that "the latter part of paragraph (a) is not conditioned upon a bona fide offer, because the amendment as offered concludes with the word 'or' rather than 'and.'" 114 Cong. Rec. 5516 (1968). Thus, in addition to outlawing refusals to sell or rent after the making of a bona fide offer, § 3604(a) also prohibits discriminatory refusals to negotiate and all other practices that "otherwise make unavailable or deny" housing "to any person because of race . . . ." This language, which is not limited by the bona fide offer requirement, is "as broad as Congress could have made it." *United States v. Youritan Construction Company, supra,* 370 F. Supp., at 648.

Furthermore, none of the other prohibitions of § 3604 include the bona fide offer limitation. Section 3604(b), for example, outlaws the discriminatory provision of housing services, and this subsection has been held to ban by racial steering in a private suit under § 3612. *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra.* Section 3604(c), which prohibits statements that indicate any limitation or discrimination in housing based on race, has been enforced

in a direct private action by plaintiffs who were not themselves homeseekers. *Mayers v. Ridley*, 465 F.2d 630 (D.C. Cir. 1972) (*en banc*). Section 3604(d) is of obvious relevance to racial steering, because it makes unlawful misrepresentations concerning the availability of housing, not just for sale or rental, but also "for inspection." Section 3604(e) prohibits "blockbusting" and has been used in a § 3612 suit by homeowners not themselves in the market for a new home to enjoin real estate agents from trying to racially change their community. *Brown v. State Realty Company*, 304 F. Supp. 1236 (N.D. Ga. 1969).

The congressional desire to avoid "harassment" of property owners that petitioners say underlies the bona fide offer requirement in the first part of § 3604(a) certainly does not extend to sanctioning the practice of racial steering by real estate agents. If anyone is being harassed in this case, it is the Village of Bellwood and its homeowners. Obviously, the bona fide offer requirement was intended to protect a seller or lessor from having his property encumbered for a period of time by a false offer. Whatever legitimate protection might be afforded a property owner by this phrase, it certainly does not exempt a realtor who engages in racial steering from Title VIII's coverage.

Although there are no differences between § 3610 and § 3612 in terms of the substantive claims that may be brought under them or the class of plaintiffs that may bring those claims, the two sections do provide for different types of relief. In a § 3612 suit, the court may grant injunctive relief and "may award to the plaintiff actual damages and not more than $1,000 punitive damages," as well as court costs and reasonable attorney fees in certain circumstances. 42 U.S.C. § 3612(c). In a suit growing out of a § 3610 complaint, however, a court

that finds that a discriminatory housing practice has occurred is only authorized to "enjoin the respondent from engaging in such practice or order such affirmative action as may be appropriate." 42 U.S.C. § 3610(d). At least one court has interpreted this provision to mean that damages are not available in an action brought under § 3610. *Brown v. Ballas*, 331 F. Supp. 1033 (N.D. Tex. 1971). See also Note, *supra*, 33 Md. L. Rev., at 300-301; Note, *Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968*, 82 Harv. L. Rev. 834, 839, 861 (1969). Therefore, petitioners' suggestion that respondents may only bring their claims pursuant to § 3610 amounts to an effort to avoid liability for the financial losses that their steering practices have imposed upon respondents. Nothing contained in Title VIII requires this ludicrous result.

2. The Legislative History Of Title VIII Demonstrates That § 3612 Was Intended To Be Independent Of And Not Limited By § 3610.

There is not a single suggestion in the legislative history of the Fair Housing Act that standing under § 3612 was designed to be narrower than standing under § 3610.[13] Throughout the legislative history, the administrative and judicial remedies were described as being alternatives to one another against the same kinds of conduct and for the same kinds of complainants. Indeed, the legislative history indicates that the words "person aggrieved" in § 3610 were intended to limit standing, not expand it, so that their omission from § 3612 suggests at least equal standing to that accorded to complainants under § 3610.

[13] For descriptions of the legislative history of Title VIII, see Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 Washburn L.J. 149 (1969) and Prentice-Hall, *Historical Overview—Equal Opportunity in Housing*, P-H: Eq. Opp. Hsing. Rptr. ¶ 2301, pp. 2312-2314 (1973).

The legislative history of Title VIII goes back to 1966, when bills containing "open housing" provisions were introduced in both the House and Senate. The 1966 bills, H.R. 14765 and S. 3296, originally authorized private enforcement only by the institution of a direct court action, like § 3612 now provides for. There was no provision in either the House or the Senate bill for an administrative remedy. During the committee debates, the question of who would have standing to sue was raised in both the House and the Senate. In the House, Representative Cramer criticized the bill on the ground that Section 406—the precursor of § 3612—simply provided that the "rights granted may be enforced by civil action," without *limiting* standing to "persons aggrieved." Mr. Cramer observed that the right to sue under the comparable public accommodations statute was limited to persons aggrieved and that omission of this limitation indicated that a third party might bring the suit on the victim's behalf. Attorney General Katzenbach stated that he had no objection to "persons aggrieved" being inserted, but that he thought this unnecessary. *Hearings on H.R. 14765*, House Committee on Judiciary, 89th Congress, 2nd Session (May 5, 1966) at p. 1203. The words "persons aggrieved" were not inserted. In Representative Cramer's view, this made standing broader than if the words had been included; in Mr. Katzenbach's, it made no difference. Both views are directly contrary to petitioners' claim that the inclusion of the words "persons aggrieved" in § 3610 made standing under that section broader than it is under § 3612. See also Chandler, *Fair Housing Laws: A Critique*, 24 Hastings L.J. 159, 181 (1972) (standing under § 3610 is "restricted" to "persons aggrieved").

The broad scope of the precursor of § 3612 also emerges from a discussion during the Senate Hearings

between Senator Ervin, Chairman of the Judiciary Committee, and Mr. Emlen, a representative of the National Association of Real Estate Boards. Both men were opposed to the proposed fair housing legislation. In reference to Section 406, the following exchange took place:

> Senator Ervin. It doesn't even have a requirement that the plaintiff shall have been refused the rental or purchase of real estate, does it?
> Mr. Emlen. That's right.

Hearings on S. 3296, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 89th Congress, 2nd Session, pp. 395-396 (1966).

Later in 1966, Congress began considering the possibility of adding adminstrative remedies to direct court actions as an alternative method of private enforcement. The initial proposal was to create a Fair Housing Board, with power similar to that found in the National Labor Relations Board. See Prentice-Hall, *supra*, ¶ 2301, at pp. 2312-13; see also 112 Cong. Rec. 17122-23. The Board would be authorized to adjudicate complaints of housing discrimination which were to be filed with HUD and which HUD was unable to resolve through conciliation. See *Report [to accompany H.R. 14765] of the Committee on the Judiciary*, No. 1678, 89th Congress, 2nd Session, pp. 9-12.

Testimony at the hearings and debate on the House floor indicate that the purpose of establishing an alternative administrative remedy was to provide an expeditious method of resolving the smaller, simpler complaints of housing discrimination without the necessity of bringing a federal lawsuit. A statement prepared by Congressman Conyers, a member of the Judiciary Committee who supported the Fair Housing Board proposal, sets forth his analysis of the function of the Board:

> Q. Why do we need such an administrative process?
>
> A. Experience with comparable State and local agencies repeatedly has shown that the administrative process is quicker and fairer. It more quickly implements the rights of the person discriminated against and also quickly resolves frivolous and otherwise invalid complaints. Conciliation is easier in an informal administrative procedure than in the formal judicial process. Also individual court suits would place a greater burden of expense, time, and effort on not only the plaintiff but on all other parties involved, including the seller, broker and mortgage financier, and on the judicial system itself.

112 Cong. Rec. 18402; see also 112 Cong. Rec. 18405. Mr. Conyers also explained that the purpose of establishing the Board was to provide the small homeowner and broker "with a forum that will not involve expensive litigation and court procedures." 112 Cong. Rec. 18409. See also *ibid* (remarks of Representative Vivian). Thus, Congress intended not only that there would be no distinction between who might bring an action under the administrative procedure as compared to the judicial procedure, but also that the administrative procedure would be available for the less significant, less complicated complaints, while the courts would continue to have jurisdiction to resolve such cases if the complainant so elected. Indeed, Congressman McClory opposed the amendment which would have created the Fair Housing Board, because it created a "duplicate manner of enforcement" with the judicial method. See 112 Cong. Rec. 18405; see also *id.*, at 18401.

The 1966 bill was passed by the House, but was blocked in the Senate by a filibuster. See Prentice-Hall, *supra*, ¶2301, at p. 2313, and 112 Cong. Rec. Index 1183. Similar legislation was again proposed in 1967.

The 1967 proposals (S. 1026 and H.R. 5700) provided for an administrative procedure within HUD and suits by the Attorney General in pattern and practice cases, as well as direct action by private complainants. HUD was to have the authority, among other things, to issue cease and desist orders. The fair housing title, however, was eventually deleted from the 1967 civil rights bill (H.R. 2516) that was ultimately approved by the House Judiciary Committee and passed by the full House.

When H.R. 2516 came to the floor of the Senate in early 1968, Senators Mondale and Brooke reintroduced a fair housing title as an amendment to the bill. See Dubofsky, *supra*, 8 Washburn L.J., at 152. This amendment, which was based on a bill (S. 1358) previously sponsored by Senator Mondale (see Dubofsky, *supra*, 8 Washburn L.J., at 149 and n. 3), proposed both that HUD would have "cease and desist" authority and that a plaintiff would have direct access to the federal courts. 114 Cong. Rec. 2270. On February 28, 1968, Senator Dirksen proposed a substitute fair housing amendment, which contained the enforcement procedures that were ultimately enacted in Title VIII. 114 Cong. Rec. 4568-4573; Dubofsky, *supra*, 8 Washburn L.J., at 156-157. The Dirksen substitute maintained intact the direct action provision that was to become § 3612, but it eliminated HUD's "cease and desist" power in favor of the "informal methods of conference, conciliation, and persuasion" that are now authorized by § 3610. The Senate passed the Dirksen bill substantially in this form on March 11, 1968 (114 Cong. Rec. 5992), and the House enacted it on April 10, 1968. 114 Cong. Rec. 9620-9621.

During the floor debate in the House on the "Dirksen Amendment", Congressman Celler, the Chairman of the Judiciary Committee, explained that the bill provides three methods of obtaining compliance: administrative

conciliation, private suits, and suits by the Attorney General. 114 Cong. Rec. 9560. His explanation did not classify any rights as being enforceable exclusively by § 3610 nor did it differentiate between different classes of plaintiffs or suggest that the § 3610 procedure is for some kinds of complainants and the § 3612 procedure for others. See 114 Cong. Rec. 9560-61. That no distinction was intended to exist as to eligible plaintiffs and remedies as between § 3610 and § 3612 was also recognized by Congressman Gerald Ford, who introduced an analysis prepared for the Judiciary Committee that described § 3612 as "an alternative to the conciliation—then litigation approach" contemplated by § 3610. 114 Cong. Rec. 9612.

In summary, there is no suggestion in any of the legislative history of Title VIII that a broader class of plaintiffs might utilize the administrative process of § 3610 than would be eligible for direct litigation under § 3612. Following this clear mandate, the lower courts have treated § 3610 and § 3612 as independent, alternative remedies in a variety of Title VIII contexts. See, *e.g.*, *Howard v. W. P. Bill Atkinson Enterprises*, 412 F. Supp. 610, 611 (W.D. Okla. 1975); *Miller v. Poretsky*, 409 F. Supp. 837, 838 (D.D.C. 1976); *Young v. AAA Realty Company of Greensboro, Inc.*, 350 F. Supp. 1382, 1384-85 (N.D. N.C. 1972); *Crim v. Glover*, 338 F. Supp. 823, 825 (S.D. Ohio 1972); *Johnson v. Decker*, 333 F. Supp. 88, 90-92 (N.D. Cal. 1971); *Brown v. Lo Duca*, 307 F. Supp. 102 (E.D. Wis. 1969). The commentators have also agreed that a plaintiff may file a § 3612 complaint without first pursuing the administrative enforcement procedures of § 3610. See Chandler, *supra*, 24 Hastings L.J., at 180; Note, *supra*, 82 Harv. L. Rev., at 839, 856-57, 862; Dubofsky, *supra*, 8 Washburn L.J., at 163 (1969); Note, *The Federal Fair Housing Requirements: Title VIII of*

the 1968 Civil Rights Act, 1969 Duke L.J. 733, 753 (1969) ("The language used [in § 3610] is permissive, not obligatory, and the complainant may forego the administrative assistance available at HUD and file a civil action in any state, local or appropriate federal district court.")

Here, the Court of Appeals followed this overwhelming consensus of authority in holding "that there is no difference between the class of plaintiffs with standing to invoke § 3610 and the class with standing to invoke § 3612." 569 F.2d, at 1019; *Appendix* 162. This decision is supported by the fact that HUD, whose construction of the statute "is entitled to great weight" (*Trafficante, supra*, 409 U.S., at 210), makes no distinction between the two classes of plaintiffs under § 3610 and § 3612. See 24 C.F.R. § 105.16 (1976). The Seventh Circuit's holding also accords with the decisions made by all of the other federal courts that have faced this issue (see cases cited at n. 4, *supra*), with the sole exception of the Ninth Circuit's ruling in *TOPIC*.[14]

[14] In *TOPIC*, the Ninth Circuit premised its holding that standing to bring suits pursuant to § 3612 is more restrictive than standing to complain under § 3610 on what it perceived to be the complex "statutory design" of the Fair Housing Act. 532 F.2d, at 1275. Although the court apparently made no inquiry into the legislative history of the statute and even though the opinion makes no reference to this history, the Ninth Circuit nevertheless reached two incredible conclusions concerning the congressional intent underlying Title VIII: (1) that since § 3610 contains a broad definition of "person aggrieved" and since § 3612 has no definition, § 3612 must be narrower; and (2) that the more complex cases dealing with the elimination of racially segregated communities, rather than individual grievances, were designed to go through HUD and be handled pursuant to § 3610, whereas § 3612 was designed to be limited to the simpler individual complaints. *Ibid.* These conclusions, which provide the foundation for the *TOPIC* decision, are directly contrary to the clear legislative history of the Act. See 31-35, *supra*.

The fact that § 3610 and § 3612 provide for alternative, independent remedies for the same types of claims does not mean that § 3610 is unimportant. There are a number of reasons why a victim of housing discrimination might choose to file a complaint with HUD under § 3610 rather than initiate a lawsuit under § 3612. First of all, the requirements of filing a lawsuit, including having to hire an attorney, may seem too difficult or expensive to the complainant. Second, he may simply be the kind of person who prefers conciliation through the good offices of a third party to the adversary battle of courtroom litigation. Third, he may not know whether he has actually been discriminated against or whether his rejection was for some legitimate reason, so he may seek a § 3610 conference with the potential defendant to see if a suit is justified. Fourth, if the complainant's main goal is to secure the apartment or home denied him, he might rationally believe that the respondent is more likely to deal with him on a fair and friendly basis if § 3610 rather than § 3612 is used. Furthermore, there may be some respondents, such as large developers who are dependent on federal financing for their projects, who may be more responsive to a HUD complaint than to a judicial proceeding. (This leverage is not available here, of course, since real estate brokers are licensed by the states and are neither regulated by nor dependent on the federal government.)

Whatever the complainant's reasons for choosing the § 3610 route, it is clear from the large and growing number of Title VIII complaints received by HUD that § 3610 is an important alternative to § 3612. See, *e.g.*, U.S. Department of Housing and Urban Development, *1976 Statistical Yearbook* 24 (3,336 complaints received by HUD under Title VIII in 1976). Thus, petitioners'

suggestion (*Brief for Petitioner* 26) that § 3610 will "atrophy" if victims of housing discrimination are permitted direct access to court under § 3612 is simply not borne out by actual experience.

Indeed HUD's large backlog of § 3610 cases means that the alternative enforcement mechanism of § 3612 is vitally important in cases where time is of the essence. As the court noted in *Brown v. Lo Duca*, 307 F. Supp. 102, 103 (E.D. Wis. 1969):

> Of course, by the time the complainant has gone the § 3610 route, the housing unit involved would in all likelihood have been rented or sold. Congress, recognizing that § 3610 might not be an effective remedy, then set up an alternative procedure for one who claims to have been discriminated against in the sale or rental of housing. The alternative remedy was provided for in § 3612.

Similarly, when realtors attempt to illegally manipulate a community by engaging in racial steering, prompt judicial action under § 3612 may be necessary, not only to stop those practices, but to show the residents of the community that the law can protect them from being panicked out of their homes. It is significant in this regard that Title VIII provides that § 3612 cases shall be heard "at the earliest practicable date" and shall be "in every way expedited" (42 U.S.C. § 3614), but this requirement does not apply to § 3610 complaints.

Title VIII applies to all sorts of discriminatory housing practices, from a simple refusal deal to a massive blockbusting campaign. By providing alternative enforcement mechanism in § 3610 and § 3612, Congress obviously intended for the individual victim of discrimination to be able to choose which technique would be most helpful to him. Title VIII gives the Bellwood

homeowners and their Village[15] the absolute right to decide for themselves whether to file under § 3610 or § 3612, or, for that matter, under both sections. See *Young v. AAA Realty of Greensboro, Inc.*, 350 F. Supp. 1382, 1386-1387 (M.D. N.C. 1972); *cf., Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47-49 (1974) (Title VII). The choice belongs to the complainants. As the court held in *Crim v. Glover*, 338 F. Supp. 823, 825 (S.D. Ohio 1972):

> Congress intended the remedies provided for in Sections 810 and 812 to be separate, distinct and in the alternative and we so hold. Consequently, plaintiffs have the right to bring suit in federal district court alleging racial discrimination in the rental of housing under Section 812, before exhausting or attempting to exhaust the remedies provided for in Section 810.

[15] At oral argument in the Court of Appeals, petitioners for the first time argued that the Village lacked standing, because it was not a "person" as defined in 42 U.S.C. § 3602(d). See 569 F.2d, at 1020, n. 8; *Appendix* 163. The Court of Appeals correctly rejected this argument, noting that § 3602(d) broadly defines "person" to include corporations such as the Village. *Ibid.* Now, also for the first time, petitioners attack the Village's standing on the ground that, even though it is a "person," it is not a "private person," as that phrase is used in the heading of § 3612. See *Brief for Petitioners* 17-18, n. 3. This argument is also without merit, since nothing in the body of § 3612 contains any such limitation. See *Brotherhood of Railroad Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528-529 (1947). The use of "private person" in the heading of § 3612 was obviously meant simply to distinguish enforcement actions under this section from public enforcement actions by HUD under § 3610 and by the Attorney General under § 3613. Congress knew how to provide for exemptions when it wrote Title VIII (see 42 U.S.C. § 3603, § 3607), and if it had meant to carve out an exception to the broad standing authorized by § 3612 for municipal corporations, it would have done so explicitly. In any event, petitioners' argument comes too late, for this Court generally does not consider issues that were not presented to nor considered by the Court of Appeals. *See, e.g., Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 147, n. 2 (1970) and cases cited.

Whatever value § 3610 may seem to have for an individual complainant, it is certainly not more effective than a § 3612 suit in protecting a community from racial steering. If there is one thing that the legislative history of Title VIII makes clear, it is that "Congress contemplated a very limited role for HUD." *Green v. Ten Eyck*, 572 F.2d 1233, 1242 (8th Cir. 1978). As noted above, (pp. 32, 34), some of the original fair housing proposals considered by Congress did include "cease and desist" power in administrative complaints. The principal change made in these proposals by Senator Dirksen's substitute amendment, which eventually became Title VIII, was to strip HUD of this authority. See Dubofsky, *supra*, 8 Washburn L. J., at 157 and 163. As this Court noted in *Trafficante*, the statute gives HUD "no power of enforcement." 409 U.S., at 210. See also Chandler, *supra*, 24 Hastings L. J., at 212 ("enforcement powers of HUD are too limited and ineffectual"); Note, *supra*, 1969 Duke L.J., at 762 (Title VIII's biggest weakness is the "complete lack of enforcement authority given to HUD.") and 770-71; Note, *supra*, 82 Harv. L. Rev., at 848. It is ridiculous to suggest, as petitioners do, that the Congress that intended Title VIII "to replace the ghettos by truly integrated and balanced living patterns" (*Trafficante, supra*, 409 U.S., at 211) would limit those in respondents' position to their § 3610 remedies. "Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the Attorney General in the matter minimal, the main generating force must be private suits" under § 3612. *Ibid.*

Petitioners' argument (*Brief for Petitioners* 20-21, 26) that Congress intended to require victims of housing discrimination to pursue state and local remedies before filing a § 3612 suit is equally ludicrous. For one thing, Congress was all too aware of the role local governments

had played in creating and maintaining segregated housing conditions in the first place. As Senator Mondale, the principal sponsor of Title VIII, noted:

> Negroes who live in slum ghettoes, however, have been unable to move to suburban communities and other exclusively White areas. In part, this inability stems from a refusal by suburbs and other communities to accept low-income housing . . . . An important factor contributing to exclusion of Negroes from such areas, moreover, has been the policies and practices of agencies of government at all levels.

114 Cong. Rec. 2277. See also *id.*, at 2279-80, 2698-2703, and 3422 (remarks of Senator Mondale), and 2281 and 2527-28 (remarks of Senator Brooke); *Mayers v. Ridley*, *supra*, 465 F.2d, at 632 (Wright, J., concurring).

Indeed, an example of how local governments can oppose enforcement of fair housing is provided by one of the cases petitioners cite, *Hunter v. Erickson*, 393 U.S. 385 (1969). In *Hunter*, the Supreme Court held that the City of Akron, Ohio violated the Equal Protection Clause when it amended its charter to prevent the city council from implementing any ordinance banning housing discrimination. Akron had argued that passage of Title VIII mooted the case, but Justice White's opinion noted that the Fair Housing Act specifically preserved state and local fair housing laws. *Id.*, at 388, n. 1 (quoting 42 U.S.C. § 3615).[16] Incredibly, petitioners cite *Hunter* to support their argument that Congress intended to defer to state and local authorities in the enforcement of Title VIII. In fact, *Hunter* proves just the opposite: while

[16] This section also declares invalid any local law "that purports to require or permit any action that would be a discriminatory housing practice under this title" (42 U.S.C. § 3615), thus providing further evidence of Congress' concern that housing discrimination sanctioned by local governments be eliminated by Title VIII.

showing how recalcitrant a city can be in providing for fair housing, *Hunter* establishes that Title VIII cannot be used to avoid the requirements of any other housing discrimination law.

Petitioners' "local control" argument is not only erroneous, it is irrelevant in this case. Even if respondents had filed under § 3610 instead of § 3612, HUD would not have referred the matter under § 3610(c), because there is no "State or local fair housing law [that] provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in Title VIII." 42 U.S.C. § 3610(c). Illinois does not have a fair housing law. The Bellwood ordinance, which petitioners have appended to their brief, obviously does not provide "substantially equivalent" rights and remedies. See, *e.g.*, Sec. 37.4 (*Brief for Petitioners*, Appendix 11) (penalty for violating the ordinance limited to a $500 fine, which is presumably payable to the Village, not to the complainant). Indeed, petitioners' suggestion that respondents should not be allowed to use § 3612 because the Bellwood ordinance provides sufficient protection for them has a certain "Alice in Wonderland" ring to it. Who, after all, knows more about the rights and remedies available under the Bellwood ordinance than the Village of Bellwood, itself? By filing these suits, the Village has in effect announced that it believes its ordinance alone is not sufficient to stop petitioners' steering practices and that Bellwood and its residents need the protection of "the powerful remedy provided by Section 3604 and 3612." See Brief for Petitioners 33.

3. *Trafficante* Establishes That Respondents Have Standing Under § 3612.

In *Trafficante, supra*, the Supreme Court determined that private suits were the "main generating force" to bring about compliance with Title VIII. 409 U.S., at 211. Thus, petitioners' claim that standing under § 3610 is broader than standing under § 3612 is directly at odds with the basic rationale of the *Trafficante* decision. Their argument also conflicts with the actual holding of *Trafficante*, which was decided under § 3612 as well as § 3610.

The two original plaintiffs in *Trafficante* brought suit pursuant to § 3610, § 3612, and 42 U.S.C. § 1982, alleging that their landlord's discriminatory practices interfered with their opportunity for interracial association and with the professional and social benefits of living in an integrated community. Complaints in intervention were filed by individual and organizational plaintiffs under §§ 3612 and 1982. Plaintiffs in intervention had not complained to HUD as had the original plaintiffs, and their only possible basis for standing under Title VIII was § 3612. The District Court dismissed the action, holding that

> plaintiffs and plaintiffs in intervention have no such generalized standing as they assert to enforce the policies of the Act. More specifically, they are not 'persons aggrieved' under § 810 of the Act, 42 U.S.C. § 3610(a), and therefore may not maintain this suit under § 812, 42 U.S.C. § 3612, or under 42 U.S.C. § 1982.

Trafficante v. Metropolitan Life Insurance Co., 322 F. Supp. 352, 353 (N.D. Cal. 1971). On appeal by both plaintiffs and plaintiffs-intervenors, the Court of Appeals for the Ninth Circuit identified the question

presented under Title VIII: "Are plaintiffs[17] 'persons aggrieved' within the meaning of section 3610 and 3612?" *Trafficante v. Metropolitan Life Insurance Co.*, 446 F.2d 1158, 1161 (9th Cir. 1972). After separately considering the provisions of § 3610 and § 3612, the Ninth Circuit affirmed, holding that "it was the intent of Congress to provide . . . through sections 3610 and 3612 methods of redress for persons who are the objects of discriminatory housing practices." 446 F.2d, at 1162. The court defined the action as a private "pattern and practice" suit and held that only the Attorney General may bring "pattern and practice" type suits.

The Supreme Court granted *certiorari*, thereby accepting for review the question whether plaintiffs, who had sued under § 3610, § 3612, and § 1982, and intervenors, who had sued only under § 3612 and § 1982, had standing to bring the action. This Court unanimously rejected the reasoning of the courts below and held that plaintiffs had standing under the 1968 Fair Housing Act. While the Court explicitly stated that it was unnecessary to reach the question of standing to sue under § 1982 (409 U.S., at 209, n.8), it held that standing was present to assert all claims "[w]ith respect to suits brought under the 1968 Act" (*Id.*, at 209), which, as has been shown, included claims both under § 3610 and claims under § 3612. Had the Court intended to leave undecided the claims under § 3612—the *only* claims under the 1968 Act which had been asserted by the plaintiffs in intervention—it would surely have included such a limitation in the footnote which excludes from con-

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[17] In footnote 2 to its opinion, the Court of Appeals explained that "except as otherwise stated, the plaintiffs and plaintiffs in intervention will be referred to collectively as plaintiffs." 446 F.2d, at 1160.

sideration claims under § 1982.[18] Moreover, the paragraph of the Court's opinion that accords broad standing under the 1968 Act to persons complaining of injury to their opportunity for interracial association follows a discussion of the Act which explicitly recognizes the direct judicial remedy provided by § 3612.

Even if *Trafficante* does not "flatly *control* this case, . . . its thrust and rationale plainly suggest that the individual plaintiffs and the Village of Bellwood have standing." 569 F.2d, at 1018-1019; *Appendix* 160. The reasoning underlying the Supreme Court's decision in

[18] See *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co., supra*, where the court concluded that *Trafficante* involved both § 3610 and § 3612:

> The original complaint was framed in terms of both sections as well as 42 U.S.C. § 1982, and subsequent intervenors filed complaints solely under §§ 3612 and 1982. Faced with this procedural posture of the case, the Ninth Circuit in Trafficante held that none of the three sections upon which plaintiffs relied conferred standing on the plaintiffs because, as current renters rather than as those seeking to rent, they were not direct victims of the alleged discriminatory housing practices. The Supreme Court reversed on the ground that, for "suits brought under the 1968 [Fair Housing] Act," Congress had defined standing as broadly as is constitutionally permissible. 409 U.S. at 209.
>
> Although the Supreme Court focused on § 3610 in *Trafficante*, it mentioned § 3612 without distinguishing it. The Court's failure to do so, particularly since it declined to reach the question of standing under § 1982, id. at 209 n. 8, lends support to the view that the Court's ruling extends to both §§ 3610 and 3612. See *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, supra, 422 F. Supp. at 1082. In fact, this was the understanding of the district court in *Trafficante* on remand and of at least one other court which subsequently considered the question. See *Village of Park Forest v. Fairfax Realty Co.*, P-H EOH ¶13,699 (N.D. Ill. 1975).

429 F. Supp., at 490.

Trafficante applies in all respects to suits brought pursuant to § 3612 as well as those under § 3610. Moreover, in view of the Court's references to the "enormity of the task of assuring fair housing" and to the Congressional intent "to replace the ghettos by truly integrated and balanced living patterns" the suggestion that § 3612 should be narrowly construed goes against the grain of the entire opinion. If the task is "enormous" and is to be primarily carried out by private litigants, it cannot be accomplished by reading narrowly the one section which deals solely with private litigation.

II.

RESPONDENTS HAVE STANDING UNDER § 1982.

Having held that the Village of Bellwood and the six individual respondents have standing under Title VIII, the Court of Appeals decided that there was "no need to consider standing under § 1982 separately. See *Trafficante, supra*, 409 at 209 n.8." 569 F.2d, at 1017, n. 4; *Appendix* 157. Thus, the standing question under § 1982 need not be reached here, unless this Court decides that respondents lack standing under the Fair Housing Act. Obviously, respondents believe that this eventuality should not occur, but if it does, the Court should hold that the Bellwood homeowners and their Village have standing under § 1982.

The allegation that petitioners engaged in racial steering by directing black homeseekers to one area and similarly situated white homeseekers to other areas states a cause of action under § 1982. See n. 10 and cases cited at page 19, *supra*. Section 1982 would be "practically nullified" if it were not construed to prohibit discriminatory misrepresentations concerning the availability of housing. See Morris and Powe, *Constitutional and Statutory Rights to Open Housing*, 44

Wash. L. Rev. 1, 83 (1968). Furthermore, whites as well as blacks may sue if they are injured by racial discrimination that violates § 1982. *Cf., McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976) (whites' claim under § 1981 upheld).

It is true, as petitioners point out (*Brief for Petitioners* 37), that "§ 1982 is not a comprehensive open housing law." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968). As Justice Stewart's opinion in *Jones* makes clear, however, this statement simply refers to the fact that § 1982 deals only with *racial* discrimination. Unlike Title VIII, § 1982 does not prohibit discrimination based on religion or national origin. *Ibid.* Unlike Title VIII, it does not specifically cover discriminatory advertising or financial arrangements. *Ibid.* Unlike Title VIII, it does not provide for enforcement by HUD, the Attorney General, or any other federal agency. *Id.*, at 413-414.

Section 1982 is certainly not less "comprehensive" than Title VIII, however, when a private suit based on racial discrimination in housing is involved. *Cf., Washington v. Davis*, 426 U.S. 229, 248-252 (1976) (§ 1981 standards in race discrimination cases comparable to Title VII standards). Indeed, in some instances, § 1982 is more comprehensive than Title VIII, because Title VIII is subject to a number of exemptions (see 42 U.S.C. § 3603, § 3607) and to a short, 180-day statute of limitations (see 42 U.S.C. § 3610, § 3612). Since § 1982 is independent of and not subject to these limitations in the Fair Housing Act (see *Jones, supra*, 392 U.S., at 416-417, n. 20), the lower courts have often upheld a § 1982 claim of racial discrimination in housing, even where Title VIII would not apply. See, *e.g., Hickman v. Fincher*, 483 F.2d 855 (4th Cir. 1973); *Meyers v. Pennypack Woods Home Ownership Ass'n.*, 559 F.2d 894 (3d Cir. 1977); *Morris v. Cizek*, 503 F.2d 1303 (7th Cir. 1974);

Johnson v. Zaremba, 381 F. Supp. 165, 167 (N.D. Ill. 1973) [and cases cited]; see also 42 U.S.C. § 3615; *cf., Johnson v. Railway Express Agency*, 421 U.S. 454 (1975) (§ 1981 independent of Title VII). These decisions carry out the mandate of this Court in *Jones* and *Sullivan v. Little Hunting Park, supra*, which concluded that a "narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by it. 396 U.S. at 238.[19] Since Title VIII in no way limits § 1982, the petitioners' argument that respondents' standing under § 3612 is narrower than it is under § 3610 simply does not apply to respondents' right to sue under § 1982.

Further, by its terms, § 1982 guarantees the right to "hold" and "sell" real property, as well as the right to purchase, lease, convey, and inherit it, free from racial discrimination. In *Tillman v. Wheaton-Haven Recreation Ass'n.*, 410 U.S. 431 (1973), the Supreme Court unanimously held that § 1982 prohibited a swimming club from discriminating against a black couple who lived in the geographic area from which the club derived its white members. Even though Dr. and Mrs. Press already owned a house and were neither in the market to sell that home or to buy a new one, Justice Blackmun's opinion pointed out that losing the benefits of club membership harmed their property rights under § 1982

[19] In *Sullivan*, the Supreme Court held that a white homeowner who was expelled from a recreational association for leasing his home to a black had standing to assert a § 1982 claim and that damages were available as a remedy under § 1982. 396 U.S., at 237-240. Sullivan's expulsion for advocating his black tenant's cause was considered punishment "for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property." *Id.*, at 237. Similarly, here the Village of Bellwood is being injured by petitioners' steering practices, and since it may be "the only effective adversary" of those practices (see n. 12, *supra*), it has standing to challenge them under § 1982.

in a number of ways. For example, the price that the plaintiffs would be able to sell their house for might be reduced by the fact that the Presses could not assure their purchaser of an option for membership in the club. *Id.*, at 438.

> Similarly the automatic waiting list preference given to residents of the favored area may have affected the price paid by the Presses when they bought their home. Thus, the purchase price to them, like the rental paid by Freeman in *Sullivan*, may well reflect benefits dependent on residency in the preference area. For them, however, the right to acquire a home in the area is abridged and diluted.
>
> When an organization links membership benefits to residency in a narrow geographical area, that decision infuses those benefits into the bundle of rights for which an individual pays when buying or leasing within the area. The mandate of 42 U.S.C. § 1982 then operates to guarantee a non-white resident who purchases, leases, or holds this property, the same rights as are enjoyed by a white resident.

Ibid. Here, the mandate of § 1982 operates to guarantee respondents' right to "hold" their homes in Bellwood free from the economic losses threatened by petitioners' racial steering, and also guarantees respondents' right, should they choose to sell, to a full market for their homes that is not limited by racial discrimination.

III.

RESPONDENTS HAVE MET THE ARTICLE III AND "JUDICIAL SELF-GOVERNANCE" REQUIREMENTS OF STANDING.

In *Trafficante, supra,* this Court unanimously held that being deprived of the benefits of living in an integrated community is "[i]ndividial injury or injury in fact" sufficient to satisfy the requirements of standing. 409 U.S., at 209. Since the Article III requirements were met in *Trafficante,* it necessarily follows that the same constitutional standards are satisfied here, since respondents' claims allege injury at least as great as was present in *Trafficante.* See *supra,* pp. 11-12 and n. 6. As the Court of Appeals held, "there is no real doubt" that respondents have alleged "actual or threatened injury to [themselves] that is likely to be redressed or avoided by a favorable decision. *Simon v. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 38 (1976); *Warth, supra,* 422 U.S. at 498, 505 (1975)." 569 F.2d, at 1016; *Appendix* 155. Indeed, even petitioners in the District Courts and those courts, themselves, assumed as much, when they took the position that the case should be decided on the basis of their interpretation of Title VIII, since that statutory issue would not have been reached unless the "threshold requirement imposed by Art. III" had been met. *O'Shea v. Littleton,* 414 U.S. 488, 493 (1974). See 569 F.2d, at 1016, n. 2; *Appendix* 155.

Nor are considerations of "judicial self-governance" that limit standing in some cases present here. Respondents seek to assert their own, individual rights, not those of absent third parties. See *supra,* pp. 14-15, 25. Unlike the claims made in *Schlesinger v. Reservists Committee to Stop the War,* 418 U.S. 208 (1974) and other cases relied on by petitioners, respondents are not asserting "generalized" grievances directed against some

governmental agency or policy. Petitioners are *private* real estate firms, and they have not cited a single case against a *private* defendant where this Court has denied standing. The "causal connection" between petitioners' steering practices and respondents' injuries is only a disputed issue in the sense that it is disputed in every other private case where money damages and other appropriate relief are sought; for purposes of satisfying Article III, there can be no dispute after *Trafficante* that this causal connection has been sufficiently alleged here.

Most importantly, respondents' claims are clearly not "generalized," as that term has been used by the Supreme Court in standing cases. Respondents are not challenging a broadly applicable government policy of the sort involved in *Schlesinger*, *Warth*, and *Simon*, *supra*. Rather, their complaints allege that specific realtors are illegally steering homeseekers in a narrow geographic area to the economic and social detriment of the Village of Bellwood and certain individuals whose homes are located in that area. Obviously, this is not a "'generalized grievance' shared in substantial measure by all or a large class of citizens." *Warth v. Seldin*, *supra*, 422 U.S., at 499. Respondents' injuries are not shared by homeowners in other Chicago suburbs, such as Winnetka or Oak Brook, or even in neighboring towns like Westchester or Berkeley,[20] much less by "every person residing in a large metropolitan area of our society." See *Brief for Petitioners* 51.

Surely, respondents' injuries are "likely to be redressed by a favorable decision." *Simon*, *supra*, 426 U.S., at 38. Once the District Courts determine that petitioners have engaged in racial steering, those courts will have "not merely the power, but the duty to render a decree which [would] so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965); *United States v. West Peachtree Tenth Corporation*, 437 F.2d 221, 228-229 (5th Cir. 1971) (housing discrimination). In particular, the Fair Housing Act explicitly authorizes a court in a § 3612 case to issue "any permanent or temporary injunction, temporary restraining order, or other order" and to "award to the plaintiff actual damages" and other monetary relief. Furthermore, once a federal court determines that § 1982 has been violated, the Supreme Court has held that it has the power to order all necessary and appropriate relief and to "use any available remedy to make good the wrong done." *Sullivan v. Little Hunting Park, Inc.*, *supra*, 396 U.S., at 239.

[20] See n. 6, *supra*.

The lower courts have recognized these long-standing principles of relief in civil rights cases by providing for thorough and effective orders against racial steering. *Zuch v. Hussey*, *supra*, is particularly instructive, because it was one of the first steering cases to reach trial. Practically all of the testimony offered by plaintiffs consisted of the experiences of testers, supplemented by expert witnesses in sociology, psychology, and demographics. These experts put the testers' direct evidence of steering into perspective by pointing out how the population of the relevant area was changing and by explaining the feelings and fears of residents in a racially changing area. 394 F. Supp., at 1031-1034. After a thorough review of the evidence, the court found some thirteen specific violations of the Fair Housing Act (*id.*, at 1052-1053) and entered a comprehensive injunction prohibiting defendants from steering in the future. *Id.*, at 1055-1059. The court in *Wheatley Heights Neighborhood Coalition v. Jenna Resales Co.*, *supra*, contemplated similar action when it upheld testers' standing to complain about racial steering in their com-

munity and noted that "a court order enjoining the alleged racial steering would relieve this injury by terminating a major disruptive influence on the racial and financial stability of Wheatley Heights." 429 F.2d, at 489.

Here, respondents seek a similar court order to help stabilize their community and monetary relief for the financial damage petitioners have already done. Since respondents would clearly benefit from the exercise of a federal court's power, they have met the requirements for standing under Article III. See *Warth, supra,* 422 U.S., at 498-499; *Simon, supra,* 426 U.S., at 38-39.

Petitioners argue that Bellwood's "[r]esidential housing patterns are determined by a complex mixture of numerous economic, social and historical factors." *Brief for Petitioners* 49. Respondents agree. But respondents cannot agree that these factors "are beyond the control of these defendants." *Id.*, at 44. By steering white and black homeseekers to different areas, these realtors have taken it upon themselves to control residential housing patterns in Bellwood in a way that Congress has condemned. Neither Congress nor the federal courts, of course, can compel people of different races to live together. But when integrated communities do exist, the homeowners who choose to live in them must be able to use Title VIII and § 1982 to prevent real estate firms from destroying those communities. If Congress cannot say that these respondents have standing to protect their homes and their community, then the federal fair housing laws have "made a promise the Nation cannot keep." See *Jones v. Alfred H. Mayer Co., supra,* 392 U.S., at 443.

CONCLUSION

For the reasons set forth above, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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